

*These notes refer to the Mental Capacity Act (Northern Ireland)  
2016 (c.18) which received Royal Assent on 9 May 2016*

# Mental Capacity Act (Northern Ireland) 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 – Nominated Person**

##### *Section 84 and 85 – Duties in relation to nominated person*

The Act creates new duties to consult and take account of the views of P's nominated person in determining what would be in P's best interests. Section 84 applies where a person is subject to such a duty and subsection (2) applies. It deals with the very possible scenario where, despite reasonable steps having been taken to establish whether P has a nominated person or who P's nominated person is, it is uncertain who, if anyone, is the nominated person. In such a scenario, section 84, which needs to be read with section 85, aims to strike a balance between ensuring P's rights are protected and enabling necessary interventions to proceed.

Subsections (2) and (3) have the effect of giving protection to the person to whom such a duty applies who, having taken reasonable steps to establish who P's nominated person is, reasonably believes that a particular person is P's nominated person. What are "reasonable steps" for this purpose will depend on the circumstances, in particular the time available and the seriousness of the proposed intervention. Subsection (1) of section 85 then provides that, as long as the person does not have reason to believe that a power in Part 3 of the Act has been exercised, his or her belief as to who is P's nominated person can be based on the assumption that that Part 3 power has not been used. So, for example, if the person concerned knows that P has appointed a nominated person under Part 3 and has no reason to believe that P has revoked the appointment, he or she can assume that the appointment is still valid.

Subject to subsection (6), subsections (4) and (5) of section 84 give similar protection where the person has taken reasonable steps to establish who P's nominated person is and believes there is no nominated person (paragraph (a) of subsection (4)), and also where it has not been practicable to establish whether a person has a nominated person or who the nominated person is (paragraphs (b) and (c) of subsection (4)). However, subsection (3) of section 85 has the effect that, if it is practicable to come to a reasonable view that a particular person is P's nominated person, the case does not fall under subsection (4)(b) or (c) of

section 84 and an application cannot be made under section 80 to the Tribunal on the basis that it cannot be established who the nominated person is.

Subsection (6) disapplies subsection (5) where the Act requires a nominated person to be in place before an intervention can proceed (i.e. the intervention is serious and the situation is not an emergency – see section 15). It is also disapplied where the Act requires a nominated person to be in place and consulted under section 54. In these cases, an application can be made to the Tribunal under section 80 to appoint a nominated person.